

1 A bill to be entitled
2 An act relating to utility regulation; amending s.
3 120.80, F.S.; providing that specified agency
4 statements are subject to rulemaking requirements
5 under chapter 120; exempting such rules from
6 ratification requirements under chapter 120 if adopted
7 within a designated period of time; amending s.
8 350.01, F.S.; revising the terms for public service
9 commissioners; specifying the methods for filling
10 vacancies to the commission; prohibiting a
11 commissioner appointed after a certain date from
12 serving more than two consecutive terms; prohibiting a
13 state legislator from serving on the commission for a
14 specified period after leaving legislative office;
15 requiring the commission to hold annual customer
16 service meetings in specified locations; amending s.
17 350.031, F.S.; creating districts for purposes of
18 specifying districts in which commissioners must
19 reside to fill certain vacancies; amending s. 350.061,
20 F.S.; revising provisions to require the Attorney
21 General to appoint a Public Counsel; specifying that
22 the Public Counsel serves at the pleasure of the
23 Attorney General; amending s. 350.0613, F.S.;
24 conforming provisions; amending s. 350.0614, F.S.;
25 conforming provisions to provide the Attorney

26 General's authority to allocate salaries and expenses
 27 of the Public Counsel and staff; repealing provisions
 28 that established the Public Counsel under the
 29 legislative branch; providing for the transfer of all
 30 duties and functions of the Office of the Public
 31 Counsel to the Office of the Attorney General;
 32 specifying that the Office of the Public Counsel will
 33 be funded from the general revenue fund; amending s.
 34 366.041, F.S.; requiring the commission to establish
 35 utility specific performance criteria in a variety of
 36 areas; specifying conditions in which quantitative
 37 metrics must be used; requiring an annual review of
 38 each utility's performance; authorizing the commission
 39 to adjust the rate of return on equity based on
 40 performance; amending s. 366.05, F.S.; requiring the
 41 commission to establish by rule a generation reserve
 42 margin planning criterion; providing conditions on
 43 approving such criterion; amending s. 366.06, F.S.;
 44 requiring the commission to establish a multi-year
 45 rate plan for each electric public utility;
 46 establishing requirements for such plans; limiting the
 47 application of a specified portion of this act;
 48 providing an effective date.

49
 50 Be It Enacted by the Legislature of the State of Florida:

51
 52 Section 1. Paragraph (a) of subsection (13) of section
 53 120.80, Florida Statutes, is amended to read:

54 120.80 Exceptions and special requirements; agencies.—

55 (13) FLORIDA PUBLIC SERVICE COMMISSION.—

56 (a) Each agency statement ~~Agency statements~~ defined as a
 57 rule under s. 120.52 that relates to cost-recovery clauses,
 58 factors, or mechanisms implemented pursuant to chapter 366,
 59 relating to public utilities, is subject to ~~are exempt from~~ the
 60 rulemaking requirements under ~~provisions of~~ s. 120.54(1) (a).
 61 Each such rule adopted prior to July 1, 2020, is exempt from s.
 62 120.541(3).

63 Section 2. Subsections (1), (2), and (3) of section
 64 350.01, Florida Statutes, are amended and subsection (9) is
 65 created to read:

66 350.01 Florida Public Service Commission; terms of
 67 commissioners; vacancies; election and duties of chair; quorum;
 68 proceedings.—

69 (1) The Florida Public Service Commission consists ~~shall~~
 70 ~~consist~~ of five commissioners appointed pursuant to s. 350.031.

71 (2) (a) Each commissioner serving on July 1, 2017 ~~1978~~, is
 72 authorized ~~shall be permitted~~ to remain in office until the
 73 completion of his or her current term. A commissioner serving on
 74 July 1, 2017, who was appointed to fill a vacancy for an
 75 unexpired portion of a term of a commissioner is authorized to

76 remain in office until completing such term.

77 (b) Upon the expiration of a the term, a successor shall
 78 be appointed for a 4-year term beginning on January 2 following
 79 the appointment and ending 4 years later on January 1 in the
 80 manner prescribed by s. 350.031. for a 4-year term, except that
 81 The following vacancies terms of the initial members appointed
 82 under this act shall be filled as follows:

83 1. The vacancies ~~vacancy~~ created by expiration of the two
 84 terms the present term ending in January, 2018 ~~1981~~, shall be
 85 filled by appointment of two commissioners, each representing an
 86 established district that is distinct from the district
 87 represented by the other. for a 4-year term and for 4-year terms
 88 thereafter; and

89 2. The vacancies created by expiration of the two present
 90 terms ending in January, 2019 ~~1979~~, shall be filled by
 91 appointment of two commissioners, each representing an
 92 established district that is distinct from the district
 93 represented by the other and that is not represented by either
 94 of the appointments made under subparagraph 1. for a 3-year term
 95 and for 4-year terms thereafter

96 3. The vacancy created by expiration of the term ending in
 97 January 2021 shall be filled by appointment of a commissioner
 98 representing a district that is not represented by the
 99 appointments made under subparagraphs 1. and 2.

100 ~~(b) Two additional commissioners shall be appointed in the~~

101 ~~manner prescribed by s. 350.031 for 4-year terms beginning the~~
 102 ~~first Tuesday after the first Monday in January, 1979, and~~
 103 ~~successors shall be appointed for 4-year terms thereafter with~~
 104 ~~each term beginning on January 2 of the year the term commences~~
 105 ~~and ending 4 years later on January 1.~~

106 (c) Vacancies on the commission shall be filled for the
 107 unexpired portion of a ~~the~~ term in the same manner as original
 108 appointments to the commission.

109 (d) (3) A ~~Any~~ person serving on the commission who seeks
 110 reappointment for a second consecutive 4-year term ~~to be~~
 111 ~~appointed or reappointed~~ shall file a statement to that effect
 112 with the nominating council by no later than June 1 of the year
 113 preceding ~~prior to~~ the year in which his or her term expires a
 114 ~~statement that he or she desires to serve an additional term.~~ A
 115 commissioner appointed after July 1, 2017, ~~2015,~~ may not serve
 116 more than two ~~three~~ consecutive terms. A commissioner appointed
 117 before July 1, 2017, may not serve more than three consecutive
 118 terms.

119 (e) A state legislator may not serve on the commission for
 120 6 years after leaving legislative office.

121 (9) At least annually, the commission shall hold a
 122 customer service meeting, open to the public, in the service
 123 territory of each public utility regulated by the commission
 124 which supplies electricity.

125 Section 3. Subsection (5) of section 350.031, Florida

126 Statutes, is amended to read:

127 350.031 Florida Public Service Commission Nominating
128 Council.—

129 (5) (a) To provide statewide representation on the
130 commission, five districts are created whose boundaries align
131 with those of the five state district courts of appeal
132 established under chapter 35. A person may not be nominated for
133 appointment to the commission unless he or she is a resident of
134 the district that he or she is nominated to represent.

135 (b) A person may not be nominated to the Governor for
136 appointment to the ~~Public Service~~ Commission until the council
137 has determined that the person is competent and knowledgeable in
138 one or more fields, including ~~which shall include~~, but not ~~be~~
139 limited to, ~~÷~~ public affairs, law, economics, accounting,
140 engineering, finance, natural resource conservation, energy, or
141 another field substantially related to the duties and functions
142 of the commission. The commission membership shall fairly
143 represent these ~~the above-stated~~ fields.

144 (c) Recommendations of the council shall be nonpartisan.

145 Section 4. Subsection (1) of section 350.061, Florida
146 Statutes, is amended to read:

147 350.061 Public Counsel; appointment; oath; restrictions on
148 Public Counsel and his or her employees.—

149 (1) The Attorney General ~~committee designated by joint~~
150 ~~rule of the Legislature or by agreement between the President of~~

151 ~~the Senate and the Speaker of the House of Representatives as~~
 152 ~~the Committee on Public Counsel Oversight~~ shall appoint a Public
 153 Counsel to represent the general public of Florida before the
 154 Florida Public Service Commission. The Public Counsel shall be
 155 an attorney admitted to practice before the Florida Supreme
 156 Court and shall serve at the pleasure of the Attorney General
 157 ~~Committee on Public Counsel Oversight, subject to biennial~~
 158 ~~reconfirmation by the committee.~~ The Public Counsel shall
 159 perform his or her duties independently. Vacancies in the office
 160 shall be filled in the same manner as the original appointment.

161 Section 5. Section 350.0613, Florida Statutes, is amended
 162 to read:

163 350.0613 Public Counsel; employees; receipt of pleadings.-
 164 The Attorney General ~~committee~~ may authorize the Public Counsel
 165 to employ clerical and technical assistants whose
 166 qualifications, duties, and responsibilities the Attorney
 167 General ~~committee~~ shall from time to time prescribe. The
 168 Attorney General ~~committee~~ may from time to time authorize
 169 retention of the services of additional attorneys or experts to
 170 the extent that the best interests of the people of the state
 171 will be better served thereby, including the retention of expert
 172 witnesses and other technical personnel for participation in
 173 contested proceedings before the commission. The commission
 174 shall furnish the Public Counsel with copies of the initial
 175 pleadings in all proceedings before the commission, and if the

176 Public Counsel intervenes as a party in any proceeding he or she
 177 shall be served with copies of all subsequent pleadings,
 178 exhibits, and prepared testimony, if used. Upon filing notice of
 179 intervention, the Public Counsel shall serve all interested
 180 parties with copies of such notice and all of his or her
 181 subsequent pleadings and exhibits.

182 Section 6. Section 350.0614, Florida Statutes, is amended
 183 to read:

184 350.0614 Public Counsel; compensation and expenses.—

185 ~~(1)~~ The salaries and expenses of the Public Counsel and
 186 his or her employees shall be allocated by the Attorney General
 187 ~~committee~~ only from moneys appropriated to the Public Counsel by
 188 the Legislature.

189 ~~(2)~~ ~~The Legislature declares and determines that the~~
 190 ~~Public Counsel is under the legislative branch of government~~
 191 ~~within the intention of the legislation as expressed in chapter~~
 192 ~~216, and no power shall be in the Executive Office of the~~
 193 ~~Governor or its successor to release or withhold funds~~
 194 ~~appropriated to it, but the same shall be available for~~
 195 ~~expenditure as provided by law.~~

196 ~~(3)~~ ~~Neither the Executive Office of the Governor nor the~~
 197 ~~Department of Management Services or its successor shall have~~
 198 ~~power to determine the number, or fix the compensation, of the~~
 199 ~~employees of the Public Counsel or to exercise any manner of~~
 200 ~~control over them.~~

201 Section 7. (1) All powers, duties, functions, records,
 202 offices, personnel, property, pending issues, and existing
 203 contracts, administrative authority, administrative rules, and
 204 unexpended balances of appropriations, allocations, and other
 205 funds relating to the Office of Public Counsel pursuant to s.
 206 350.061, Florida Statutes, are transferred by a type two
 207 transfer, as defined in s. 20.06(2), Florida Statutes, from the
 208 Legislature to the Office of the Attorney General. The Office of
 209 Public Counsel shall be funded from the General Revenue Fund.

210 (2) Notwithstanding ss. 216.292 and 216.351, upon approval
 211 by the Legislative Budget Commission, the Executive Office of
 212 the Governor shall transfer funds and positions between the
 213 Legislature and the Office of the Attorney General to implement
 214 this act.

215 Section 8. Subsections (1) and (2) of section 366.041,
 216 Florida Statutes, are amended to read:

217 366.041 Rate fixing; adequacy of facilities as criterion;
 218 performance criteria for public utilities supplying
 219 electricity.-

220 (1)(a) In fixing the just, reasonable, and compensatory
 221 rates, charges, fares, tolls, or rentals to be observed and
 222 charged for service within the state by any and all public
 223 utilities under its jurisdiction, the commission is authorized
 224 to give consideration, among other things, to the efficiency,
 225 sufficiency, and adequacy of the facilities provided and the

226 services rendered; the cost of providing such service and the
227 value of such service to the public; the ability of the utility
228 to improve such service and facilities; and energy conservation
229 and the efficient use of alternative energy resources; provided
230 that no public utility shall be denied a reasonable rate of
231 return upon its rate base in any order entered pursuant to such
232 proceedings. In its consideration thereof, the commission shall
233 have authority, and it shall be the commission's duty, to hear
234 service complaints, if any, that may be presented by subscribers
235 and the public during any proceedings involving such rates,
236 charges, fares, tolls, or rentals; however, no service
237 complaints shall be taken up or considered by the commission at
238 any proceedings involving rates, charges, fares, tolls, or
239 rentals unless the utility has been given at least 30 days'
240 written notice thereof, and any proceeding may be extended,
241 prior to final determination, for such period; further, no order
242 hereunder shall be made effective until a reasonable time has
243 been given the utility involved to correct the cause of service
244 complaints, considering the factor of growth in the community
245 and availability of necessary equipment.

246 (b) In fixing the just, reasonable, and compensatory
247 rates, charges, fares, tolls, or rentals to be observed and
248 charged for service within the state by any and all public
249 utilities that supply electricity under its jurisdiction, the
250 commission shall establish utility-specific performance criteria

251 related to system reliability, customer service, power plant
252 performance, utility costs, employee and public safety, customer
253 utilization of approved energy efficiency and conservation
254 programs, implementation of distributed generation programs, the
255 efficient use of alternative energy resources, and any other
256 areas identified by the commission or elsewhere in this chapter.
257 Performance criteria shall, to the greatest extent possible, be
258 based on quantitative metrics that are objective, easily
259 measurable and verifiable, and reasonably within the utility's
260 control. In an order entered pursuant to such proceedings, the
261 commission shall develop a mechanism by which overall utility
262 performance will be reviewed and evaluated on an annual basis,
263 based on the performance criteria established by the commission
264 pursuant to this paragraph, and by which the utility's allowed
265 return on equity for the period reviewed shall be adjusted based
266 on its performance. The commission shall design and implement
267 this mechanism to determine whether overall utility performance
268 has been excellent, good, adequate, or unsatisfactory for the
269 period reviewed, and the commission may establish financial
270 incentives to encourage excellent utility performance, provided
271 that:

272 1. A utility whose performance is deemed excellent for the
273 period shall, inclusive of any incentive rewards and penalties,
274 be allowed to retain for that period a return on equity no
275 greater than 100 basis points above the midpoint of the range of

276 reasonableness approved by the commission.

277 2. A utility whose performance is deemed good for the
 278 period shall, inclusive of any incentive rewards and penalties,
 279 be allowed to retain for that period a return on equity no
 280 greater than 50 basis points above the midpoint of the range of
 281 reasonableness approved by the commission.

282 3. A utility whose performance is deemed adequate for the
 283 period shall, inclusive of any incentive rewards and penalties,
 284 be allowed to retain for that period a return on equity no
 285 greater than the midpoint of the range of reasonableness
 286 approved by the commission.

287 4. A utility whose performance is deemed unsatisfactory
 288 for the period shall, inclusive of any incentive rewards and
 289 penalties, be allowed to retain for that period a return on
 290 equity no greater than 80 percent of the top of the range of
 291 reasonableness approved by the commission.

292 (2) The power and authority herein conferred upon the
 293 commission shall not cancel or amend any existing punitive
 294 powers of the commission but shall be supplementary thereto and
 295 shall be construed liberally to further the legislative intent
 296 that excellent ~~adequate~~ service be rendered by public utilities
 297 in the state in consideration for the rates, charges, fares,
 298 tolls, and rentals fixed by said commission and observed by said
 299 utilities under its jurisdiction.

300 Section 9. Subsection (7) of section 366.05, Florida

301 Statutes, is amended to read:

302 366.05 Powers.—

303 (7) To assure the development of adequate and reliable
 304 energy grids, the commission shall establish by rule a
 305 generation reserve margin planning criterion applicable to each
 306 public utility under its jurisdiction that provides electric
 307 service. The commission shall not approve or recognize the use
 308 of a reserve margin planning criterion above 15 percent for any
 309 such utility unless it finds that extraordinary circumstances
 310 require the use of a higher reserve margin planning criterion to
 311 assure adequate and reliable energy grids. The commission shall
 312 have the power to require reports from all electric utilities to
 313 assure the development of adequate and reliable energy grids.

314 Section 10. Subsection (1) of section 366.06, Florida
 315 Statutes, is amended to read:

316 366.06 Rates; procedure for fixing and changing.—

317 (1)(a) A public utility shall not, directly or indirectly,
 318 charge or receive any rate not on file with the commission for
 319 the particular class of service involved, and no change shall be
 320 made in any schedule. All applications for changes in rates
 321 shall be made to the commission in writing under rules and
 322 regulations prescribed, and the commission shall have the
 323 authority to determine and fix fair, just, and reasonable rates
 324 that may be requested, demanded, charged, or collected by any
 325 public utility for its service.

326 (b) The commission shall investigate and determine the
327 actual legitimate costs of the property of each utility company,
328 actually used and useful in the public service, and shall keep a
329 current record of the net investment of each public utility
330 company in such property which value, as determined by the
331 commission, shall be used for ratemaking purposes and shall be
332 the money honestly and prudently invested by the public utility
333 company in such property used and useful in serving the public,
334 less accrued depreciation, and shall not include any goodwill or
335 going-concern value or franchise value in excess of payment made
336 therefor.

337 (c) In fixing fair, just, and reasonable rates for a
338 public utility that provides electric service, the commission
339 shall establish a rate plan under which such rates will remain
340 in effect for a fixed period of no less than 3 years and which
341 may provide for clearly defined adjustments to rates during that
342 fixed period to account for expected changes in utility revenues
343 and costs. Such adjustments may include, but are not limited to:
344 index-based adjustments that account for factors such as
345 inflation, customer growth, and industry productivity;
346 predetermined percentage adjustments; adjustments for planned
347 capital additions, subject to commission approval; or a
348 combination of one or more types of adjustments. The rate plan
349 shall include the performance evaluation mechanism established
350 under s. 366.041 and may include provisions to address the

351 potential for utility earnings, during the term of the rate
352 plan, to exceed or fall below the range authorized by the
353 commission in the rate proceeding, provided that such provisions
354 may not be triggered by application of the performance
355 evaluation mechanism established under s. 366.041. Such
356 provisions may include, but are not limited to, mechanisms that
357 provide for the sharing of surplus or deficit earnings and
358 provisions for termination of the rate plan prior to its
359 established termination date.

360 (d) In fixing fair, just, and reasonable rates for each
361 customer class, the commission shall, to the extent practicable,
362 consider the cost of providing service to the class, as well as
363 the rate history, value of service, and experience of the public
364 utility; the consumption and load characteristics of the various
365 classes of customers; and public acceptance of rate structures.

366 Section 11. Paragraph (e) of subsection (2) of s. 350.01,
367 as created in Section 1 of this act, shall not preclude a
368 commissioner appointed before July 1, 2017, from completing his
369 or her appointed term or from seeking reappointment as otherwise
370 permitted by law.

371 Section 12. This act shall take effect July 1, 2017.